IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NO. 241 OF 2003
and
CMP.NO.2579 OF 2003

Coimbatore Stock Exchange Ltd.,
"Chamber Towers"
8/732, Avinashi Road,
Coimbatore 641 018. ... Petitioner/Defendant

Vs.

1.Associated Securities ltd.,
163, Mount Road,
Chennai 600 017
rep. by its Managing Director,
Mr.S.R.Velanandan ...Respondent/Plaintiff

This Civil Revision petition is filed under Section 115 of CPC against the order and decree dated 19.11.2002 and made in I.A.No.1249 of 2001 in O.S.No.50 of 1998 on the file of II Additional Subordinate Judge, Coimbatore.

For petitioners : Mr.T.R.Rajaraman
Senior Counsel
for Mr.T.K,.Prem Kumar
For Respondent : No appearance

O R D E R

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An order of the second Additional Subordinate Judge, Coimbatore in dismissing the application to condone the delay in re-presentation of an application which was filed to set aside the exparte decree passed in O.S.No.50 of 1998 is the subject matter under challenge.

2. Heard the learned Senior counsel appearing for the petitioner and there is no representation on behalf of the respondent.

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3. From the materials available on record, it could be seen that the suit for recovery of money in O.S.No.50 of 1998 filed by the respondent was taken on file by the II Additional Subordinate Judge, Coimbatore and an exparte decree came to be passed on 13.10.2000 and in order to set aside the same, the defendant filed an application in time, but the same was returned . In re-presenting the same, a delay of 250 days has occurred and in order to condone the delay, the instant application was filed in I.A.No.1249 of 2001. The said application was dismissed by the court below and the said order is under challenge.

4. As could be seen from the available materials, the application to set aside the ex-parte decree was filed in time, but the same was returned and it was re-presented with a delay of 250 days and in order to condone the delay, the instant application was filed along with an affidavit of the Clerk of the Advocate appearing for the revision petitioner, where it is clearly set out that exparte decree was passed on the day when the matter was posted in the list and after came to know about the same, an application was filed to set it aside and it was returned and taken, but not re-presented in time due to oversight and also due to ill health of the clerk. Thus, it would be quite clear that in the state of affairs that could be seen, the defendant had no role to play. In so far as the delay caused by the Clerk of the counsel is concerned, the defendant should not be penalized . The delay that was caused is no fault of him and apart from this, an affidavit of the Clerk has also been filed, but the Court below has not considered the same and since the re-presentation was not made in time, which in the opinion of the lower Court was so serious .

5. Taking into consideration the facts and circumstances of the case, this Court is of the considered opinion that so long as the application to set aside the exparte decree was filed in time, there was delay in re-presentation and the same has also been explained by way of an affidavit by the Clerk of the advocate and the defendant had no role to play, certainly the defendant who should be given an opportunity and should not be penalized for no fault of him.

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6. Under such circumstances, the lower court should have allowed the application and hence the order of the lower court is set aside and the application for setting aside the exparte decree has to be taken on file and decide on merits and in accordance with law.

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7. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, CMP.No.2579 of 2003 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

VJY

To

1. The IInd Additional Subordinate Judge,
Coimbatore.

1 cc To Mr.T.R.Rajaraman, Advocate, SR.32157.

C.R.P.NPD.NO. 241 of 2003
and connected M.P.

NSM(CO)
RVL 14.06.2007

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